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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
WESTERN SECTION

SINGULAR COMPUTING LLC, )  
 )  
Plaintiff, )  
 ) No. 1:19-CV-12551-FDS  
vs. )  
 )  
GOOGLE LLC, )  
Defendant. )

Before the Honorable F. Dennis Saylor, IV,  
United States District Court Judge  
motion hearing via videoconference  
held on Tuesday, October 25, 2022.

Leigh B. Gershowitz, RMR, CRR  
Official Federal Court Reporter  
United States Courthouse  
300 State Street, Room 303D  
Springfield, Massachusetts 01105

APPEARANCES:

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## P R O C E E D I N G S

(Hearing commenced at 1:32 p.m.)

THE CLERK: Court is now in session, the matter of Singular Computing LLC versus Google LLC, Civil Action No. 19-12551. Participants are reminded that photograph and recording and rebroadcasting of this hearing is prohibited and may result in sanction.

Would counsel please identify themselves for the record, starting with the plaintiff.

ATTORNEY HAYES: Paul Hayes for the plaintiff.

ATTORNEY GANNON: Kevin Gannon for the plaintiff.

THE COURT: Good afternoon.

ATTORNEY SPEED: Good afternoon, your Honor. Nathan Speed from Wolf, Greenfield & Sacks on behalf of the defendant, Google. I'm joined by Asim Bhansali and Matthias Kamber.

THE COURT: All right. Good afternoon.

ATTORNEY BHANSALI: Good afternoon.

ATTORNEY KAMBER: Good morning, your Honor.

THE COURT: All right. This is a hearing on what I think is Docket 359, which is Google's motion to amend -- to add certain contentions. If I'm thinking about this clearly, which may not be correct -- in fact, it is probably more likely not correct than correct -- there's kind of three broad categories. Google wants to make certain amendments in

1 response to the *Markman* order, wants to make certain  
2 amendments in response to what has happened at the PTAB, and  
3 then this issue with the -- what is either prior art or not  
4 concerning the GRAPE-3 system and the Hamada and Lienhart  
5 articles.

6 Unless I'm missing something -- and again I may well  
7 be -- I'm inclined to permit the amendments to the -- to the  
8 extent that they address the *Markman* order. And I'm not sure  
9 that is terribly controversial, but I could be corrected, and  
10 so it is not clear to me we need to spend much time on that.  
11 But the other two issues I would like some further argument  
12 or explanation.

13 So with that, Mr. Speed, are you taking the lead  
14 here?

15 ATTORNEY SPEED: I think it is going to be  
16 Mr. Bhansali.

17 THE COURT: Okay. Mr. Bhansali?

18 ATTORNEY BHANSALI: Thank you, your Honor.

19 And your Honor, I think the categories broadly  
20 defined are correct with maybe two nuances. First, I think  
21 that the amendments that we are making with respect to  
22 GRAPE-3 that we're proposing to make are also addressed to  
23 the *Markman* order. And so the addition of Hamada and  
24 Lienhart relate to obviousness grounds that are intended to  
25 address the *Markman* order. And I can address that in more

1 detail.

2           And then with respect to the -- what your Honor  
3 referred to as the PTAB developments, I guess I would -- I  
4 would maybe frame that as relating to the positions that  
5 Singular is taking on appeal in the Federal Circuit from the  
6 PTAB's order because had Singular not appealed the adverse  
7 portions of the PTAB decision, then we wouldn't be seeking to  
8 amend our contentions on that front. And so with that, let  
9 me maybe just kind of dive in.

10           I think, as your Honor recognizes, most of the  
11 relief that we're seeking is unopposed and is the relief that  
12 is directed to the claim construction order, both on the  
13 noninfringement contentions as well as on the three other  
14 prior art systems, the Leeser, Belanovic, VFloat library  
15 system, the Cray system and the CNAPS system are all  
16 unopposed. And we have, you know, in light of the PTAB  
17 decision, we've narrowed our prior art case essentially to  
18 these four prior art systems.

19           And really the amendments that we're seeking to make  
20 to GRAPE-3 are very similar to the others in that what we're  
21 seeking to do is to say we had charted this GRAPE-3 system in  
22 our original contentions. And there are certain limitations  
23 that arise from your Honor's adoption of the claim  
24 construction positions that Singular advocated related to  
25 memory and then how that might require some kind of control

1 in the processing element. And what we're positing is that  
2 if you take the GRAPE-3 system, it would've been obvious to a  
3 person of ordinary skill in the art to essentially add those  
4 features. And we're pointing to the Hamada and Lienhart  
5 references as -- as the additional references that you would  
6 combine with GRAPE to show why that would've been obvious.

7           These are not grounds that we could have asserted in  
8 the PTAB because the core basis of our -- of this invalidity  
9 argument is the GRAPE-3 as a system. And we're only relying  
10 on Hamada and Lienhart for this one, you know, additional  
11 element arising out of the claim construction for 103  
12 obviousness combination. Singular doesn't dispute that they  
13 had notice of these articles and also that, you know, had  
14 they chosen to, they could've taken discovery on GRAPE-3.  
15 So --

16           THE COURT: Let me interrupt you if I can. You keep  
17 referring to GRAPE-3 as a system, which I'm sure it is, but  
18 in a way that makes it sound like it is not subject to the  
19 usual rules and limitations about prior art. I mean, I  
20 thought you disclosed it as a prior art reference. I mean,  
21 it is not an article in a scholarly journal or a patent, but  
22 it is -- isn't it still prior art? In other words, why would  
23 it be differently from any other prior art? And can't I turn  
24 that argument around that you make, well, GRAPE-3 refer to  
25 Hamada and Lienhart, so you knew the articles existed, right,

1 if they're referred to in GRAPE-3, and you're saying well, we  
2 want to combine Hamada with GRAPE-3 and that shows that it is  
3 obvious, meaning Hamada will be treated like prior art,  
4 right? I mean, that's what you're saying, you take these two  
5 items of prior art, combine them, and it would've been  
6 obvious. I'm not being very articulate here, but I don't  
7 understand why GRAPE-3 should not be treated as any other  
8 form of prior art and, for that matter, Hamada and Lienhart,  
9 like any other form prior art.

10 ATTORNEY BHANSALI: Yes, your Honor. I think  
11 GRAPE-3 should be treated as a system, so nonprinted  
12 publication prior art. So, in other words, as your Honor  
13 recognized -- I think you have two decisions on this, the  
14 *SiOnyx* and *Palomar* cases under, you know, section -- I think  
15 it is the estoppel provision that arises after a final  
16 written decision of the PTAB only applies to printed  
17 publication art. It doesn't apply to prior art systems. I  
18 think that is -- I don't think Singular itself disputes that.  
19 And so --

20 THE COURT: Hamada itself is a printed publication,  
21 correct?

22 ATTORNEY BHANSALI: Yes, your Honor, it is. And --  
23 but we're not -- we're only relying on Hamada to address this  
24 one element. So it is the memory element. As you recall,  
25 your Honor construed the claim to say that a low precision,

1 high dynamic range execution unit requires an arithmetic  
2 circuit paired with memory. That was Singular's claim  
3 construction position. So they wanted a narrower  
4 construction there. And so Hamada only addresses that  
5 one -- one aspect that your Honor found in the claim  
6 construction. The core prior art reference is the GRAPE-3  
7 system, which we have two -- we have some different sources  
8 of proof for that. And so all we're saying is this is not a  
9 ground that we could have brought before the PTAB because the  
10 GRAPE-3 system could not have been raised as prior art before  
11 the PTAB.

12 And so we're bringing that GRAPE-3 system as the  
13 prior art. But in order to do that, after your Honor's claim  
14 construction order, we have to say -- we think our argument  
15 is stronger if we say, well, it would've been obvious  
16 to -- to the extent that they say that GRAPE-3 doesn't  
17 disclose memory, it would've been obvious to add memory as  
18 shown in Hamada and Lienhart. So it is treated -- so it is  
19 treated like other prior art. And under section 315, 315(e),  
20 35 USC 315(e) estoppel --

21 THE COURT: That's the estoppel statute?

22 ATTORNEY BHANSALI: Yeah, that's the estoppel  
23 statute, your Honor. That doesn't apply to the GRAPE-3  
24 system. And all we're doing is saying, okay, we're going to  
25 take this GRAPE-3 system and instead of having just an



1 anticipation ground, we're adding a 103 obviousness ground,  
2 which is addressed directly to the limitation that your Honor  
3 found in adopting Singular's positions in the *Markman* order.

4 THE COURT: Okay.

5 ATTORNEY BHANSALI: I don't know if your Honor has  
6 further questions on that. If not, I can move to the claim  
7 construction -- the Federal Circuit claim construction issue.

8 THE COURT: Okay.

9 ATTORNEY BHANSALI: As to that issue, I think the  
10 important thing, your Honor, just sort of up front, this is  
11 not a new position. Our original infringement contentions --  
12 noninfringement contentions and the red line of those to the  
13 new position is in sealed Exhibit 2, put Singular on notice  
14 that if they take this narrow position on what the claims  
15 mean, then that would provide us with a noninfringement  
16 argument. Singular has been on notice of that since -- since  
17 very early -- since early in the case. They took fact  
18 discovery. They deposed our witnesses on this very aspect of  
19 the operation of the -- of the accused product. We lay that  
20 out in our opening memorandum of law at page 15.

21 And because this relates to nonpublic -- sort of  
22 nonpublic aspect of the -- of the way that the product  
23 operates, I'm referring to the sealed papers rather than  
24 describing the actual operation, your Honor, since we're in  
25 an open hearing. But I -- obviously, if -- I can try to

1 provide more detail if that would be helpful.

2           So Singular had notice of our position  
3 since -- since before they took the depositions of all of  
4 our -- all of our engineers. They asked about this and got  
5 discovery on it. And then they continued to maintain this  
6 narrow construction in the PTAB. The PTAB rejected that  
7 position. And then in July of this year, July of 2022, they  
8 filed their notice of appeal in the PTAB. And as one of the  
9 issues they identified as a basis of their appeal is the  
10 claim construction that the PTAB rejected.

11           And so all we're seeking to do is to say, look, you  
12 were already on notice of this. And now, our contentions,  
13 the amended contentions, would say, if this claim  
14 construction is adopted, then we have a dispositive  
15 noninfringement argument. And they need look no further than  
16 the admissions of their expert, all of which we laid out in  
17 our opening memorandum of law, as to why we would not  
18 infringe under this claim construction.

19           So the amendment is really adding clarity and really  
20 putting a fine point on a noninfringement position that  
21 Singular already had notice of and took -- took discovery  
22 about, your Honor. And the big picture here is, they want to  
23 have their cake and eat it too. They want to advocate a  
24 narrow construction in the Federal Circuit to preserve the  
25 validity of claims, but they want to walk away from the

1 admissions that would provide a dispositive noninfringement  
2 argument under that narrow construction. And we're just  
3 simply trying to put them on the clearest notice possible,  
4 beyond what they already had, that that position creates a  
5 noninfringement argument. Particularly because we're about  
6 to go into expert discovery and we want to make sure that  
7 those positions are all fully aired out in expert discovery.

8 THE COURT: One of the things I find head  
9 scratching -- and really this is from both sides -- is just  
10 exactly what I'm supposed to do with this. There's,  
11 obviously, a very good chance that this case will go to trial  
12 before the, you know, appeal is resolved. My decision at  
13 this point is law of the case. I can't quite figure out how  
14 this is going to play out in this case and whether or  
15 not -- I mean, are these really, you know, infringement or  
16 noninfringement contentions or is it judicial estoppel? I'm  
17 having trouble figuring out, as a practical matter, what this  
18 means going forward. I mean, I can say, "All right, you can  
19 amend your contentions and your experts can opine," but now  
20 what? What happens at the trial? How does this work? I  
21 don't get how this is going to play out going forward.

22 ATTORNEY BHANSALI: Well, your Honor, I think what I  
23 would say is Singular's appellate brief is due in December.  
24 And I think as -- I think your Honor at the last status  
25 conference recognized that there's some open issues around

1 the appeal. And I think what I would propose -- what Google  
2 proposes -- is we go through expert discovery with this  
3 issue, you know, disclosed as part of our contention so that  
4 both sides address it and that we can then address how and if  
5 that affects the trial at a future status conference.

6 Because the -- I think, your Honor, the one  
7 thing -- you mention that your claim construction is law of  
8 the case. We, obviously, you know, don't -- we're not -- we  
9 didn't seek to reconsider your Honor's claim construction and  
10 are going to pursue our expert reports under your Honor's  
11 claim construction. But this was not a situation where your  
12 Honor rejected the claim construction that Singular is  
13 putting forth in the -- in the Federal Circuit. They never  
14 took that position in front of your Honor and it wasn't  
15 really relevant to any of the positions Google was taking.  
16 It was not as if that was sort of contrary.

17 So there was no reason for us to sort of point to  
18 Singular's contention in the claim construction and say,  
19 "Hey, look, this supports the Google position" because it  
20 wasn't really relevant to any of the arguments that we were  
21 making. And it really is just a narrowing by Singular for  
22 validity purposes relative to the way they construed the  
23 claim in front of your Honor. It is the classic Supreme  
24 Court view of patents from the 1860s. You can't have a nose  
25 of lax, right? You can't say it is narrower in front of

1 the -- you know, when you're trying to preserve validity and  
2 then say it is broader when you're arguing infringement.

3 And so at this stage, it is a challenging issue  
4 because of the timing between the Federal Circuit and the  
5 trial in front of your Honor. But I think we have to -- what  
6 I would say is, let's push forward in expert discovery and  
7 then kind of have all of the issues aired out so it is all on  
8 the table, and then we can address later what to do with it.  
9 Because it would, of course, be highly prejudicial to Google  
10 for Singular to be able to pursue an infringement theory  
11 under a broader claim construction than a narrower claim  
12 construction that they ultimately were to prevail on in the  
13 Federal Circuit.

14 THE COURT: Okay. All right. Mr. Hayes?

15 ATTORNEY HAYES: Yes, your Honor. I gave you a  
16 little bit of a -- some slides because my brother's argument  
17 that most everything in their brief is unopposed is I think a  
18 little much.

19 But in any event, so that it is clear, the first  
20 issue, as I see it, is what prior art references are they  
21 trying to get into the case? And there's two. Lienhart and  
22 Hamada. That's it. And they're printed publications. Now,  
23 in that slide, as we've had, is, obviously, this local rule.  
24 They tried to sort of bootstrap that into the case and say,  
25 for some reason, as if it is mandatory. The rule is, as

1 we've pointed out, it is discretionary. It says, "maybe  
2 amended," not "shall be amended," etcetera.

3 Now, that is important to some degree, the reason  
4 being is if we look at the law as it relates to estoppel,  
5 they, as a matter of law, black letter law, are prohibited  
6 from relying upon those two references. As we pointed out,  
7 they knew, or could've known, but they did know. And this is  
8 undisputed. As of -- they filed their IPR petition November  
9 6th, between October and then the last one, November 6th.

10 At November 6th, they knew of the Lienhart  
11 publication. We know they knew of the Lienhart publication  
12 because they sent it to us in an e-mail. In the Lienhart  
13 publication is the reference to the Hamada reference. So  
14 they knew of both of those at the time of the IPR and thus,  
15 as a matter of law, per se law, they are prohibited from  
16 using them in this litigation in any way, shape, or form.  
17 That's just what the law is.

18 So I understand that there's a local rule. But  
19 there's also a statute. And the statute says, as we brief,  
20 that they are prohibited from using these and, therefore,  
21 they're out. Now, they -- they can be out on a summary  
22 judgment motion, which we would file anyways with respect to  
23 all of the other stuff, or with respect to them here. But, I  
24 mean, clearly, as a matter of law, they can't try to use this  
25 local rule to go around the estoppel law. And the fact is,

1 as a matter of law, these facts, as I put in this slide page  
2 5, are undisputed. And, therefore, as a matter of law, bang,  
3 it is out.

4 Now, with respect to -- so that's with respect to  
5 the two publications. I have here the explanation, which we  
6 put in the brief, about diligence. And, obviously, they've  
7 been aware of the Lienhart reference for 21 months.  
8 Twenty-one months and then they wait until now, August 24th,  
9 to try to amend their contentions and try to make it up out  
10 of a local rule, vis-à-vis -- vis-à-vis a claim construction  
11 event. I mean, that is -- I think under the *Phillips* case,  
12 with the lack of diligence, I mean, it can be dismissed,  
13 their motion, on no diligence and prejudice.

14 Now, here's another thing. Now, discovery closed  
15 July 23rd, 2021. So now, four months -- 14 months after the  
16 close of discovery, they want to add two publications that  
17 they've known about for 21 months, all conveniently after all  
18 of their witnesses have been deposed. Clearly, we didn't  
19 depose anybody on these publications because they never  
20 identified them as any -- as even being in their contentions.  
21 So my position is I think, as a matter of law, the Court  
22 should get rid of these two publications under the estoppel  
23 law.

24 Now, for the Court's edification, we intend, fairly  
25 soon, to file a summary judgment motion because we believe

1 that, in fact, all of their art is out. Now, the reason I  
2 say that, Judge, is my brother said at least three times that  
3 when it comes to GRAPE-3, or a system, that that does not  
4 have anything to do with the estoppel law. That is  
5 absolutely incorrect as a matter of law. What you have to  
6 understand, the only evidence that they've produced, to date,  
7 on this GRAPE-3 system, or any of these other two systems,  
8 are printed publications describing those systems.

9 And, in fact, they submitted claim charts where they  
10 represented to the -- in the claim charts that these  
11 publications have each and every element of the claim that  
12 they anticipate on the face of it. So the law, contrary to  
13 my brother's argument, is that if, in fact, that is the  
14 circumstance, if, in fact, they try -- this, quote, system  
15 is, quote, described in a printed publication, then they  
16 could've put that before the patent office and it is  
17 excluded.

18 And we've cited -- we have a bunch of cases to that  
19 effect. We didn't cite that in this case because it is sort  
20 of like a little bit -- I didn't realize my brother was going  
21 to make the argument that the estoppel doesn't apply to  
22 systems because it does. It just depends on the  
23 circumstance. So in any event, the only issue here before  
24 the Court are the two publications on that matter. And I  
25 think, as a matter of law and the statute, that they should



1 be excluded.

2 Now, when we talk about the infringement stuff,  
3 this, in our view, is nothing more than trying to get a  
4 second bite at the claim construction apple. All right?  
5 They base their idea of this, of -- to amend all of this  
6 stuff, on the theory of a position that Singular took in the  
7 IPR. They keep talking about that. Well, here's the point,  
8 Judge. They knew of this position as of February 2021. They  
9 knew of the position we took with respect -- an argument with  
10 respect to a Singular piece of prior art. They knew about  
11 that. Right? No dispute about that.

12 The *Markman* hearing is in March 2021. Did they  
13 bring that to your attention and say, Listen, this is the  
14 position that they're taking in the IPR, so you shouldn't  
15 construe the claim the way you did. You should construe it  
16 in a different manner? Answer, no. Did they -- did they  
17 bring this to the Court's attention after you issued your  
18 *Markman* hearing -- ruling? No. Did they move for  
19 reconsideration after you issued your *Markman* hearing? No.  
20 Zero.

21 They made the tactical -- the tactical decision not  
22 to bring in anything relative to the IPR. Why would that be?  
23 Because they argued in the IPR that, in fact, everything is  
24 just clear and ordinary. And then they had all of these  
25 other arguments to you. So they want two bites at the apple.

1 If they were that concerned about these statements -- and we  
2 didn't address every single little nuance of them, but if  
3 they were that concerned, they should've brought it up in  
4 your court to let you know about it, not now, after the fact  
5 and after the fact we have all of this makeup stuff about the  
6 Appeals Court and this and that.

7 And the bottom line is claim construction is done.  
8 As a matter of law, you don't have to even look at claim  
9 construction in the PT -- in the IPR circumstance. That is  
10 irrelevant. Actually, whatever it is, they can argue. But  
11 the point is, that has nothing to do with the price of bread  
12 for the purposes of this case.

13 If they wanted that claim construction to be  
14 anything relative to these arguments that my brother is  
15 hallucinating, they bring it up to you and make a decision.  
16 What they want you to do, eventually down the road -- because  
17 we've been doing this for too long -- is they want some  
18 negative inference where you don't infringe if you do this.  
19 They want a claim construction do over on that. And the law  
20 on that is egregious, is difficult to have that done. This  
21 is like a back door whatever.

22 So my position on this is Google made a  
23 tactical -- particular tactical decision not to bring any of  
24 the statements made by either side to the -- to this Court.  
25 And now, losing in the IPR, they want a whole redo. And

1 losing in the claim -- in the -- of the *Markman*, they want a  
2 redo. And I think it is just not time for that, Judge. It  
3 is just too much. And then, you know, all they want is -- it  
4 is just -- whatever. So that's our cir -- that's our  
5 position.

6 THE COURT: So --

7 ATTORNEY HAYES: Go ahead.

8 THE COURT: You're saying I should not take this  
9 into account at all, that Singular -- I don't hear you  
10 contradicting this -- taking a different view in this court  
11 than in the IPR proceeding? In other words, taking a broad  
12 view of the patent here and narrow view in the PTAB  
13 proceeding and say that, to the extent that that difference  
14 exists, they've waived their right to assert it here; is what  
15 I think I hear you're saying?

16 ATTORNEY HAYES: Exactly. First of all, first of  
17 all, I didn't get into disputing that they're saying we're  
18 taking different positions here and there because we're not  
19 at all. That was not what the circumstance is. They  
20 cite -- they -- it is too complicated to get into that. It  
21 would not have been complicated should we have had that  
22 before you in a *Markman* hearing where we could brief and  
23 argue it, et cetera.

24 But I think for the purposes here, my brother's  
25 statement that we're taking different views is wrong, first

1 of all. And, two, it related to a nonasserted claim and, in  
2 this case, not even related to prior art that is going to be  
3 in this case. It started to distinguish a piece of prior art  
4 of a non -- in a nonasserted claim. And they want to  
5 trans -- they want that to be bootstrapped into some type of  
6 noninfringement defense because in their claim construction  
7 they just happened to lose.

8 So I think that, obviously, that's -- that -- that's  
9 our position here. They waived it. Plain and simple. And  
10 if they have anybody to blame about it, it is themselves  
11 because they never cited it or brought it up to you, for  
12 obvious reasons. We never briefed it. We never got to  
13 address all of that stuff relative to what they say was said,  
14 Google said, et cetera, at all.

15 So that's -- that's sort of our position on this,  
16 Judge. One is with respect to -- with respect to this --  
17 their noninfringement theory, we think they waived that by  
18 not giving it to you and letting you decide it. And, two,  
19 with respect to the first one, as a matter of law, those  
20 publications cannot be part of this lawsuit.

21 And with respect to the -- this system, we will file  
22 a summary judgment motion, sort of shortly, because this  
23 seems like this is probably a good time to do it right now.  
24 The group 3 system is -- cannot be used either. And we have  
25 law and the cites and everything to that effect. So there

1 will be a motion, Judge, with your permission, obviously, to  
2 chuck out validity in this case.

3 THE COURT: All right. Mr. Bhansali, do you want to  
4 respond?

5 ATTORNEY BHANSALI: Yes, your Honor.

6 Let me start with the claim construction issue. I  
7 think it is important to recognize again that this is a  
8 position that Singular is advocating in the Federal Circuit,  
9 the appellate court, whose decision would be, on a claim  
10 construction, would be binding on your Honor and on Singular.  
11 And we've laid out in our briefing, in quite detail, why,  
12 under their own expert's clear admission, that would put us  
13 in a position where we have a dispositive noninfringement  
14 argument based on their admission.

15 The only tactical behavior here is Singular taking  
16 these inconsistent positions. We had no reason -- have no  
17 reason and had no reason -- to advocate for that construction  
18 in front of your Honor. That's not our position. We  
19 advocated for the opposite construction in the PTAB. And  
20 won. But if Singular were to prevail in the Federal Circuit,  
21 then that would be inconsistent with their infringement read  
22 before your Honor.

23 And so -- and this construction does not relate to  
24 an unasserted claim. It goes to the definition of the low  
25 precision high dynamic range execution unit, which is in

1 every claim, including the asserted claims of the patent.  
2 And so the only way to address this is for the parties to  
3 address this in expert discovery and then, your Honor, for us  
4 to address it in a -- at a later status conference when the  
5 parties' positions on appeal are more fully fleshed out  
6 because, you know, we haven't seen Singular's appellate brief  
7 yet. All we know is thus far is that in July they told the  
8 Federal Circuit that they intend to appeal the claim  
9 construction. And so that's what we're expecting.

10 And, again, there's no prejudice to Singular from  
11 this issue being in the case because they don't dispute that  
12 our infringement contentions had them on notice of this and  
13 that they took discovery on this very feature, which is the  
14 one that they're saying if a -- if a chip has that, then it  
15 can't be a low precision high dynamic range execution unit.  
16 So that's on the claim construction issue.

17 On the prior art, your Honor, I think one thing  
18 to -- I think it is worth pointing to the language of the  
19 statute. And your Honor has addressed this statute in the  
20 *Palomar* and *SiOnyx* decisions. What the estoppel relates to  
21 is on any ground. In other words, what it says is that you  
22 may not -- you may not request or maintain a proceeding with  
23 respect to that claim on any ground that the petitioner  
24 raised or reasonably could've raised during that inter partes  
25 review.

1           And the ground here is based on a system, the  
2   GRAPE-3 system. And if later Mr. Hayes wants to challenge  
3   whether GRAPE-3 is a system at summary judgment, that's his  
4   prerogative. We'll address that when it's -- when he makes  
5   that argument and we have a full discovery -- expert  
6   discovery record addressing -- addressing that. But that's  
7   not before the Court right now, whether GRAPE-3 is or isn't  
8   properly brought as a system reference. The only issue  
9   before the Court is whether, in light of the claim  
10   construction order, we can refer to the Hamada and Lienhart  
11   articles to address the limitations that were found and  
12   adopted in your Honor's claim construction order. And as to  
13   that --

14           THE COURT: And that is limited to this -- to the  
15   language about being paired with a memory?

16           ATTORNEY BHANSALI: Yeah, paired with the memory,  
17   yes, your Honor. And there's a section, which Singular  
18   hasn't addressed, where we say, well, in light of that, your  
19   Honor sort of kind of has some discussion of control. So we  
20   point to -- we point to a portion of the references that also  
21   discusses control. It is limited to those two issues with  
22   respect to Hamada and Lienhart. Otherwise, we're just  
23   relying on GRAPE-3 as it existed in the preexisting chart.

24           And exhibit -- let me just make sure I have the  
25   right exhibit number, look at the charts. I think it is

1 Exhibit 5 -- I'm sorry, your Honor. Exhibit 6. 361-6 is our  
2 red line claim chart for GRAPE-3, for the GRAPE-3 system  
3 grounds. And as you'll see, it is, like, one paragraph in  
4 there that just addresses this limitation.

5 So it is not like we're bringing in these articles  
6 to kind of address all of the elements. It is really just  
7 that one piece. And that will be -- that is very clear from  
8 the red line that we submitted as Exhibit 6 to our -- it is  
9 Exhibit 6 in my declaration in support of the motion. So  
10 that is 361-6, ECF 361-6.

11 But, again, the black letter law, your Honor, to be  
12 clear -- since Mr. Hayes used the phrase "black letter  
13 law" -- the black letter law is that you can combine a system  
14 reference with a publication without being estopped because  
15 that is a ground, which is the language in the statute that  
16 could not have been raised in the Federal Circuit. And,  
17 again, these were not -- this issue wasn't briefed in any  
18 detail, but I would point your Honor to your *SiOnyx* decision,  
19 330 F. Supp. 3d 574, 2018, and your *Palomar* decision, 373  
20 F. Supp. 3d 322, 2019, which actually lay these -- lay out  
21 this principal in, you know, with some clarity. And in  
22 fact --

23 THE COURT: Well, as I like to say, I hope you have  
24 better authority than that.

25 ATTORNEY BHANSALI: Your Honor, we did cite



1 other authority -- I mean, the better authority is the  
2 statute. The statute is very clear on that. But I -- I  
3 would just simply say that we are allowed to rely on  
4 publications to prove the elements and content of the system.  
5 And the law is clear on that, so.

6 THE COURT: Okay. All right. Mr. Hayes, last word.

7 ATTORNEY HAYES: Your Honor, just, first of all, my  
8 brother just indicated or said to you somehow that the  
9 statement in the IPR goes to the definition of the low  
10 precision high dynamic range. If my brother believed that to  
11 be a correct assessment of the circumstance, he would've  
12 brought that to your attention during the *Markman* hearing,  
13 which he didn't, after the *Markman* hearing, which he didn't,  
14 or reconsideration motion, which he didn't.

15 As far as we're concerned -- and if you look at  
16 the -- we didn't brief all of this because it is not a -- I  
17 don't think it is apparent -- appropriate, is that  
18 they -- the statement that they say we did make there and  
19 that the expert's testimony, they cropped his testimony. I  
20 mean, and it has been done over and over and over. No one  
21 has had a chance to do any of this, which they would've had  
22 we had a *Markman* hearing where they didn't play the game and  
23 not bring it before you. That's the first thing.

24 And the second thing, my brother's assessment of the  
25 law is, with all due respect, wrong. That is not -- simply

1 because you say, "Oh, I have a device," who cares if you have  
2 a device? They told the -- they submitted claim charts  
3 saying that device in itself anticipates based what? Based  
4 solely upon a printed publication. Not -- we have  
5 not -- they never produced the device. Who knows who made  
6 it. No evidence whatsoever. The only evidence of quoted  
7 device is a printed publication that they specifically  
8 represented at each and every element of the claim. And the  
9 law on that is exactly opposite to what my brother just said.

10 And, in fact, the case -- I mean, I have a, shall we  
11 say, a draft of the summary judgment on all of this. But the  
12 law is that, under these particular circumstances, that those  
13 three devices are out. Because all they -- they could've put  
14 those publications before the patent office. They decided  
15 not to, for whatever reason. And they have to live with the  
16 consequences of their act.

17 And so -- and by the by, that is not even before the  
18 Court now. We are not before the Court on whether  
19 group -- this 3 or, whatever, is a system, in or out. The  
20 only issue is whether these two publications are indeed  
21 precluded as a matter of law, which they are. You can't say,  
22 well, we're only going to use them for paragraph 4 or  
23 paragraph 7, relate to this, that, and whatever. That you  
24 can't do. They cannot be used for anything. Why? Because  
25 they were known at the time and they could've been given to

1 the patent office and they chose not to. I mean, that is  
2 just the law.

3 We could supplementary brief this group thing, but I  
4 don't think it is -- this group 3 system, et cetera, with the  
5 law on that. But I don't think it is -- like, right before  
6 you at this point in time.

7 ATTORNEY BHANSALI: Your Honor, that was a little  
8 more than a last word. Might I have an opportunity to  
9 briefly respond?

10 THE COURT: All right.

11 ATTORNEY BHANSALI: I think Mr. Hayes's last point  
12 is really the one that should dispose of the GRAPE-3 issue,  
13 which is it is not before you right now whether GRAPE-3 is  
14 properly brought as a ground for invalidity. And if GRAPE-3  
15 is a proper ground, then all we're doing -- or -- if it is  
16 not before you whether GRAPE-3 is a proper ground, then the  
17 only issue is whether, in light of the *Markman* order, we can  
18 amend, in order to amend our contentions, in order to address  
19 the limitations in the *Markman* order. That is all we're  
20 seeking to do. And then if he wants to challenge later the  
21 propriety of GRAPE-3 or of these grounds, he can do that.  
22 But what is before your Honor right now is whether this  
23 amendment is driven by the *Markman* order. And we've shown in  
24 our papers and I've explained here why it is. Because it is  
25 just addressed to those limitations. So that should really

1 dispose of that issue.

2 And on the claim construction, your Honor, their  
3 position seems to be that we should have regaled your Honor  
4 with all of the back and forth that both parties were taking  
5 in the IPR when that entire proceeding was interlocutory  
6 because there was no decision. That doesn't -- that would  
7 be -- that would make the claim construction a mess, your  
8 Honor. We didn't bring it to you because it wasn't directly  
9 relevant to either party's sort of opposed arguments in the  
10 *Markman*. And it wasn't a decision yet of the PTAB, much less  
11 one that is being advocated before the Federal Circuit.

12 And as I said before, if they weren't appealing the  
13 PTAB decision, we wouldn't be here on that issue. But  
14 they're the ones taking it to the Federal Circuit, which is  
15 why we want to add that clarity to our contentions so that  
16 the issue is addressed in the discovery in this case. The  
17 expert discovery. It has been addressed in the fact  
18 discovery, but in the expert discovery, your Honor.

19 THE COURT: All right. I'm going to take this under  
20 advisement. I want to digest this a little bit and go back  
21 and look at the briefs in light of this. I'm not quite ready  
22 to rule from the bench. But I will try to get that decision  
23 out as quickly as I can. Okay?

24 ATTORNEY BHANSALI: Thank you, your Honor.

25 ATTORNEY HAYES: Thank you.

1 THE COURT: All right. Thank you.

2 (Whereupon, the proceedings were concluded at 2:14 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, Leigh B. Gershowitz, Registered Merit Reporter and Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that the foregoing transcript is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter, to the best of my knowledge and ability.

/s/ Leigh B. Gershowitz

Leigh B. Gershowitz, RMR, CRR